

# PUBLIC HEALTH DEPARTMENT[641]

## Adopted and Filed

Pursuant to the authority of Iowa Code section 141A.2(2), the Department of Public Health hereby amends Chapter 11, “Acquired Immune Deficiency Syndrome (AIDS),” Iowa Administrative Code.

The rules in Chapter 11 describe procedures and programs related to HIV/AIDS, including laboratory certification, training programs, notification and testing of exposed persons, and the AIDS Drug Assistance Program (ADAP). These amendments for the Iowa ADAP provide updated and consistent language, an expansion of program definitions, and a clear delineation between program components.

Notice of Intended Action was published in the March 20, 2013, Iowa Administrative Bulletin as **ARC 0650C**. No comments were received. These amendments are identical to those published under Notice.

The State Board of Health adopted these amendments on May 8, 2013.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 141A.3.

These amendments will become effective on July 3, 2013.

The following amendments are adopted.

ITEM 1. Adopt the following new definitions of “Deductible,” “Health insurance assistance program,” “Medication assistance program” and “Payer of last resort” in rule **641—11.84(141A)**:

“*Deductible*” means an amount of money that an insured person must pay out of pocket before any benefits from the health insurance policy can be used.

“*Health insurance assistance program*” means a component of ADAP that purchases health insurance and pays insurance premiums, copayments for medications, and deductibles for eligible enrollees in ADAP.

“*Medication assistance program*” means a component of ADAP that provides medications directly to eligible enrollees in ADAP.

“*Payer of last resort*” means a requirement to coordinate services and seek payment from all other sources before Ryan White funds are used.

ITEM 2. Amend the following definitions in rule **641—11.84(141A)**:

“*ADAP advisory committee*” means the committee appointed by the bureau of ~~disease prevention and immunization~~ HIV, STD, and hepatitis to provide advice and technical assistance to the department regarding the ADAP program.

“*AIDS drug assistance program*” or “*ADAP*” means the Iowa AIDS drug assistance program administered by the bureau of ~~disease prevention and immunization~~ HIV, STD, and hepatitis within the department and includes two components, the medication assistance program and the health insurance assistance program.

“*Bureau*” means the bureau of ~~disease prevention and immunization~~ HIV, STD, and hepatitis within the department.

“~~Family~~ *Household income*” means the combined gross earned and unearned income of all individuals within the ~~family-unit~~ household.

“~~Family-unit~~ *Household*” means a group of individuals residing together who are related by birth, marriage, or adoption; or an individual who does not reside with any other individual to whom the individual is related by birth, marriage, or adoption.

“~~Iowa AIDS~~ *ADAP formulary*” means the list of drugs approved for use in the ADAP program by the bureau upon recommendation of the ADAP advisory committee.

ITEM 3. Amend rule 641—11.85(141A) as follows:

**641—11.85(141A) Purpose.** The AIDS drug assistance program is a state-administered program that provides certain HIV/AIDS medications to eligible low-income individuals diagnosed with HIV or

AIDS if adequate funding is available for administration of the program. There are two components to the Iowa AIDS drug assistance program: the medication assistance program and the health insurance assistance program. The AIDS drug assistance program is authorized under ~~Title II of the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act~~ Part B of Title XXVI of the Public Health Service (PHS) Act, as amended by the Ryan White HIV/AIDS Treatment Extension Act of 2009 (Public Law 111-87). This legislation requires that the Ryan White program, including the AIDS drug assistance program, be the payer of last resort for HIV-related services. ~~The AIDS drug assistance program will cease to provide medications when available funding is exhausted or terminated.~~ ADAP is not an entitlement program and does not create a right to assistance. In the event that funding is exhausted or terminated or there are changes in state or federal guidelines, programs, or regulations that impact funding available to ADAP, the department reserves the right to close enrollment, cease to provide medication assistance or health insurance assistance, or alter eligibility criteria until such time that funding is again sufficient.

ITEM 4. Renumber current rules **641—11.86(141A)** and **641—11.87(141A)** as **641—11.87(141A)** and **641—11.88(141A)**.

ITEM 5. Adopt the following new rule 641—11.86(141A):

**641—11.86(141A) Ensuring payer of last resort.** To ensure that ADAP is the payer of last resort, the Iowa Medicaid enterprise shall grant the department access to client-level information for persons enrolled in Medicaid.

ITEM 6. Amend renumbered rules 641—11.87(141A) and 641—11.88(141A) as follows:

**641—11.87(141A) Eligibility requirements.**

**11.87(1)** An applicant is eligible to participate in ~~ADAP~~ the ADAP medication assistance program if the applicant:

- a. Applies for enrollment in ADAP on a form provided by the department;
- b. Has no ~~or inadequate~~ health insurance to cover the cost of the drugs that are or may become available from ADAP;
- c. ~~Is not fully covered under the Iowa Medicaid program~~ currently being prescribed a drug on the ADAP formulary;
- d. Has an annual gross ~~family~~ household income that is less than or equal to 200 percent of the poverty level as determined by the most recent federal poverty guidelines published annually by the United States Department of Health and Human Services for the size of the household (this income shall be determined after a \$500 work-related ~~deduction~~ allowance is deducted from the monthly gross salary of an employed person with HIV/AIDS);
- e. ~~Has liquid assets, not including major residence, household furnishings, and one vehicle, valued at less than \$10,000;~~
- f. e. Has a medical diagnosis of HIV infection or AIDS or is an unborn infant or an infant under 18 months of age who has an HIV-infected mother; and
- g. f. Is a resident of Iowa.

**11.87(2)** An applicant is eligible to participate in the ADAP health insurance assistance program if the applicant:

- a. Applies for enrollment in ADAP on a form provided by the department;
- b. Has creditable health insurance coverage;
- c. Is currently being prescribed a drug on the ADAP formulary;
- d. Has an annual gross household income that is less than or equal to 400 percent of the poverty level as determined by the most recent federal poverty guidelines published annually by the United States Department of Health and Human Services for the size of the household;
- e. Has a medical diagnosis of HIV infection or AIDS or is an unborn infant or an infant under 18 months of age who has an HIV-infected mother; and
- f. Is a resident of Iowa.

~~11.87(2)~~ **11.87(3)** For purposes of ~~paragraph 11.86(1) “d,”~~ paragraphs 11.87(1) “d” and 11.87(2) “d,” an individual may report annual family household income by using actual family household income for the most recent 12 months or by using estimated annual family household income determined by multiplying the current monthly family household income by 12.

**641—11.88(141A) Enrollment process.**

**11.88(1)** The department shall review each completed application and shall determine enrollment based upon applicant eligibility, the date on which the application was completed, and the availability of funds. When the department determines that an applicant is eligible for enrollment, the applicant may be enrolled for ~~12~~ six months commencing with the date of the determination or may be enrolled for a shorter time period at the discretion of the department.

**11.88(2)** An applicant shall provide the department with all requested information and shall execute any consent forms or releases of information necessary for the department to verify eligibility.

~~**11.88(3)** The department shall review eligibility annually after enrollment unless one of the following events occurs within the 12-month period to end eligibility:~~

- ~~a. The enrolled individual dies;~~
- ~~b. The enrolled individual is determined eligible and enrolled to fully receive medical services through a third-party payer;~~
- ~~c. The enrolled individual’s annual family income increases to an amount above 200 percent of the poverty level; or~~
- ~~d. The enrolled individual establishes residency outside the state of Iowa.~~

**11.88(4)** An applicant must submit a renewal application form on an annual basis, accompanied by all information requested by the department.

ITEM 7. Renumber current rules **641—11.88(141A)**, **641—11.89(141A)**, **641—11.90(141A)** and **641—11.91(141A)** as **641—11.90(141A)**, **641—11.91(141A)**, **641—11.92(141A)** and **641—11.93(141A)**, respectively.

ITEM 8. Adopt the following new rule 641—11.89(141A):

**641—11.89(141A) Discontinuation of services.**

**11.89(1)** The department shall review eligibility semiannually after enrollment unless one of the following events occurs within the six-month period to end eligibility:

- a. The enrolled individual dies;
- b. The enrolled individual is determined eligible and enrolled to fully receive medical services through a third-party payer and is able to fully pay the insurance deductibles and copayments;
- c. The enrolled individual’s annual household income increases to an amount above the respective ADAP component’s income guidelines;
- d. The enrolled individual establishes residency outside the state of Iowa;
- e. The enrolled individual does not request drugs within a 90-day period; or
- f. The enrolled individual is placed in an institution such as a nursing home, state prison, or jail for more than 30 days.

**11.89(2)** An applicant must submit renewal documentation on a semiannual basis, accompanied by all information requested by the department.

ITEM 9. Amend renumbered paragraph **11.90(1)“b”** as follows:

- b. Are on the Iowa AIDS ADAP formulary.

ITEM 10. Amend renumbered subrule 11.91(2) as follows:

**11.91(2)** The department shall place names on the waiting list in the following order: in chronological order based upon the date of receipt of a completed application by the department.

- ~~a. Women who have been diagnosed with HIV infection or AIDS and who are pregnant shall be placed on the waiting list with priority over all other applicants.~~
- ~~b. Applicants who are already on medications shall be placed on the waiting list with priority over all applicants listed in paragraphs “c” and “d.”~~

~~c. HIV medication naïve patients shall be placed on the waiting list in the following order with priority over all applicants listed in paragraph “d”:~~

- ~~(1) CD4 count of < 200 cells/mm<sup>3</sup> regardless of viral load.~~
- ~~(2) New opportunistic (HIV-related) infection or malignancy.~~
- ~~(3) Asymptomatic and CD4 count of 200-350 and viral load > 55,000 copies/ml.~~
- ~~(4) Asymptomatic and CD4 count of > 350. If viral load is > 55,000, a documented fall in CD4 counts on three measurements of at least 15 percent of first measurement (i.e., 500 on first test must drop to less than or equal to 425).~~

~~d. All other applicants shall be placed on the waiting list in chronological order based upon the date of receipt of a completed application by the department.~~

ITEM 11. Amend renumbered subrule 11.91(3) as follows:

**11.91(3)** To verify that applicants on the waiting list continue to meet ADAP eligibility requirements, the department shall require applicants on the waiting list to submit reapplication forms annually semiannually.

ITEM 12. Adopt the following new subrule 11.91(4):

**11.91(4)** The department shall remove applicants from the waiting list in the chronological order in which their completed applications were approved, provided all updates were received by the department.

ITEM 13. Amend renumbered rule 641—11.93(141A) as follows:

**641—11.93(141A) Confidentiality.** The ADAP application and all information received or maintained by the department in connection with the ADAP program shall be considered confidential information in accordance with Iowa Code section 141A.9.

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EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 5/29/13.